

House Daily Reader

Thursday, January 26, 2006

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State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

527M0321 **HOUSE APPROPRIATIONS COMMITTEE ENGROSSED**
NO. HB 1015 - 01/20/2006

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to acquire an equestrian
2 facility for South Dakota State University and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Board of Regents may select a site for equestrian facilities including
5 approximately fifty-seven thousand square feet of buildings, ninety-five thousand square feet
6 of site improvements, and approximately fifteen acres of pasture development from within the
7 lands acquired pursuant to section 3, chapter 96, of the 2001 Session Laws. The board may lease
8 that site, together with such portions of surrounding grounds as may be needed for construction
9 purposes, to the South Dakota State University Foundation to permit the foundation to construct
10 the structures to house the equestrian facilities.

11 Section 2. In consideration for the lease authorized in section 1 of this Act, the foundation
12 shall construct the project in accordance with the requirements of chapters 5-14 and 5-18 just
13 as though the structures and improvements comprising the equestrian facilities were constructed
14 by the Board of Regents. However, the foundation shall enter into all contracts for the
15 construction of the facility and make all payments therefor, once the payments have been duly



1 authorized by the Bureau of Administration and the executive director of the Board of Regents.

2 Section 3. The term of the lease authorized in section 1 of this Act may not exceed the time
3 required for site preparation and construction through project acceptance plus ten years from the
4 date of acceptance.

5 Section 4. The Board of Regents may lease back the equestrian facilities constructed
6 pursuant to this Act from the foundation for a period of ten years from the date of acceptance
7 at an annual lease payment of one hundred sixty-five thousand dollars.

8 Section 5. The Board of Regents may maintain and repair the equestrian facilities during the
9 term of the leaseback.

10 Section 6. Upon termination of the lease and leaseback authorized by the Act, the foundation
11 shall donate the facility and all right or interest that it may have in the equestrian facilities to the
12 Board of Regents, on behalf of the State of South Dakota, for the use and benefit of South
13 Dakota State University and the Board of Regents may accept the equestrian facilities on behalf
14 of the State of South Dakota, for the use and benefit of South Dakota State University.

15 Section 7. No general fund dollars may be used for the maintenance and repair of the facility
16 authorized by this Act.

17 Section 8. Whereas, this Act is necessary for the support of the state government and its
18 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
19 full force and effect from and after its passage and approval.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0224

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB 1045** - 01/24/2006

Introduced by: The Committee on Commerce at the request of the Department of Revenue
and Regulation

1 FOR AN ACT ENTITLED, An Act to modify the requirements for coordination of benefits
2 between health plans.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 Terms used in this chapter mean:

7 (1) "Birthday," refers only to a month and day in a calendar year and does not include the
8 year in which the person was born;

9 (2) "Claim," a request that benefits of a plan be provided or paid. The benefits claimed
10 may be in the form of:

11 (a) Services (including supplies);

12 (b) Payment for all or a portion of the expenses incurred; and

13 (c) An indemnification.

14 (3) "Closed panel plan," a plan that provides health benefits to covered persons primarily
15 in the form of services through a panel of providers that have contracted with or are



1 employed by the plan and that excludes benefits for services provided by other
2 providers, except in cases of emergency or referral by a panel member;

3 (4) "Consolidated Omnibus Budget Reconciliation Act of 1985" or "COBRA," coverage
4 provided under a right of continuation pursuant to federal law;

5 (5) "Coordination of benefits" or "COB," a provision establishing an order in which
6 plans pay their claims, and permitting secondary plans to reduce their benefits so that
7 the combined benefits of all plans do not exceed total allowable expenses;

8 (6) "Custodial parent," the parent awarded custody of a child by a court decree, or in the
9 absence of a court decree, the parent with whom the child resides more than one half
10 of the calendar year without regard to any temporary visitation;

11 (7) "Group-type contract," a contract that is not available to the general public and is
12 obtained and maintained only because of membership in or a connection with a
13 particular organization or group, including blanket coverage. The term does not
14 include an individually underwritten and issued guaranteed renewable policy even
15 if the policy is purchased through payroll deduction at a premium savings to the
16 insured since the insured would have the right to maintain or renew the policy
17 independently of continued employment with the employer;

18 (8) "High-deductible health plan," the meaning given the term under section 223 of the
19 Internal Revenue Code of 1986, as amended by the Medicare Prescription Drug,
20 Improvement and Modernization Act of 2003;

21 (9) "Hospital indemnity benefits," benefits not related to expenses incurred. The term
22 does not include reimbursement-type benefits even if they are designed or
23 administered to give the insured the right to elect indemnity-type benefits at the time
24 of claim;

(10) "Policyholder," the primary insured named in a nongroup insurance policy;

(11) "Primary plan," a plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a primary plan if the plan either has no order of benefit determination rules, or its rules differ from those permitted by this Act; or all plans that cover the person use the order of benefit determination rules required by this Act, and under those rules the plan determines its benefits first;

(12) "Secondary plan," a plan that is not a primary plan.

Section 2. That chapter 58-18A be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, the term, allowable expense, means any health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person.

If a plan is advised by a covered person that all plans covering the person are high-deductible health plans and the person intends to contribute to a health savings account established in accordance with section 223 of the Internal Revenue Code of 1986, the primary high-deductible health plan's deductible is not an allowable expense, except for any health care expense incurred that may not be subject to the deductible as described in section 223(c)(2)(C) of the Internal Revenue Code of 1986.

An expense or a portion of an expense that is not covered by any of the plans is not an allowable expense.

Any expense that a provider by law or in accordance with a contractual agreement is prohibited from charging a covered person is not an allowable expense.

Section 3. That chapter 58-18A be amended by adding thereto a NEW SECTION to read

as follows:

The following are examples of expenses that are not allowable expenses:

- (1) If a person is confined in a private hospital room, the difference between the cost of a semi-private room in the hospital and the private room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses;
- (2) If a person is covered by two or more plans that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement methodology, any amount charged by the provider in excess of the highest reimbursement amount for a specified benefit is not an allowable expense;
- (3) If a person is covered by two or more plans that provide benefits or services on the basis of negotiated fees, any amount in excess of the highest of the negotiated fees is not an allowable expense; and
- (4) If a person is covered by one plan that calculates its benefits or services on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement methodology and another plan that provides its benefits or services on the basis of negotiated fees, the primary plan's payment arrangement shall be the allowable expense for all plans. However, if the provider has contracted with the secondary plan to provide the benefit or service for a specific negotiated fee or payment amount that is different than the primary plan's payment arrangement and if the provider's contract permits, that negotiated fee or payment shall be the allowable expense used by the secondary plan to determine its benefits.

Section 4. That chapter 58-18A be amended by adding thereto a NEW SECTION to read

as follows:

1 For the purposes of this chapter, the term, allowable expense, may exclude certain types of
2 coverage or benefits such as dental care, vision care, prescription drugs, or hearing aids. A plan
3 that limits the application of COB to certain coverages or benefits may limit the definition of
4 allowable expense in its contract to expenses that are similar to the expenses that it provides.
5 If COB is restricted to specific coverages or benefits in a contract, the definition of allowable
6 expense shall include similar expenses to which COB applies.

7 If a plan provides benefits in the form of services, the reasonable cash value of each service
8 shall be considered an allowable expense and a benefit paid.

9 The amount of the reduction may be excluded from allowable expense if a covered person's
10 benefits are reduced under a primary plan because the covered person does not comply with the
11 plan provisions concerning second surgical opinions or pre-certification of admissions or
12 services, or because the covered person has a lower benefit because the covered person did not
13 use a preferred provider.

14 Section 5. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 For the purposes of this chapter, the term, plan, means a form of coverage with which
17 coordination is allowed. Separate parts of a plan for members of a group that are provided
18 through alternative contracts that are intended to be part of a coordinated package of benefits
19 are considered one plan and there is no COB among the separate parts of the plan.

20 If a plan coordinates benefits, its contract shall state the types of coverage that will be
21 considered in applying the COB provision of that contract. Whether the contract uses the term,
22 plan, or some other term such as program, the contractual definition may be no broader than the
23 definition of plan in this section.

24 Section 6. That chapter 58-18A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 For the purposes of this chapter, the term, plan, includes:

- 3 (1) Group and nongroup insurance contracts and subscriber contracts;
- 4 (2) Uninsured arrangements of group or group-type coverage;
- 5 (3) Group and nongroup coverage through closed panel plans;
- 6 (4) Group-type contracts;
- 7 (5) The medical care components of long-term care contracts, such as skilled nursing
- 8 care;
- 9 (6) The medical benefits coverage in automobile no fault and traditional automobile fault
- 10 type contracts; and
- 11 (7) Medicare or other governmental benefits, as permitted by law, except for medicare
- 12 supplement coverage. That part of the definition of plan may be limited to the
- 13 hospital, medical, and surgical benefits of the governmental program.

14 Section 7. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 For the purposes of this chapter, the term, plan, does not include:

- 17 (1) Hospital indemnity coverage benefits or other fixed indemnity coverage;
- 18 (2) Accident only coverage;
- 19 (3) Specified disease or specified accident coverage;
- 20 (4) Limited benefit health coverage;
- 21 (5) School accident-type coverages that cover students for accidents only, including
- 22 example, personal care, adult day care, homemaker services, assistance with activities
- 23 of daily living, respite care, and custodial care or for contracts that pay a fixed daily
- 24 benefit without regard to expenses incurred or the receipt of services;

- 1 (6) Medicare supplement policies;
- 2 (7) A state plan under medicaid; or
- 3 (8) A governmental plan, which, by law, provides benefits that are in excess of those of
- 4 any private insurance plan or other nongovernmental plan.

5 Section 8. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
6 as follows:

7 This Act applies to all plans that are issued on or after January 1, 2007.

8 Section 9. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 The director shall promulgate rules pursuant to chapter 1-26 to carry out the provisions of
11 this Act. In promulgating any rules, the director shall give great weight to any national standards
12 that may exist for the coordination of benefits for plans. The rules are limited to:

- 13 (1) Definition of terms;
- 14 (2) Sample policy provisions; and
- 15 (3) Disclosure requirements.

16 Section 10. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
17 as follows:

18 No COB provision may be used that permits a plan to reduce its benefits on the basis that:

- 19 (1) Another plan exists and the covered person did not enroll in that plan;
- 20 (2) A person is or could have been covered under another plan, except with respect to
- 21 Part B of Medicare; or
- 22 (3) A person has elected an option under another plan providing a lower level of benefits
- 23 than another option that could have been elected.

24 Section 11. That chapter 58-18A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 No plan may contain a provision that its benefits are always excess or always secondary
3 except in accordance with the rules permitted by this Act. No plan is required to coordinate
4 benefits provided that it pays benefits as a primary plan; but if the plan coordinates benefits, it
5 shall do so in compliance with the provisions of this chapter.

6 Section 12. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 Under the terms of a closed panel plan, no benefits are payable if the covered person does
9 not use the services of a closed panel provider. No COB occurs if a covered person is enrolled
10 in two or more closed panel plans and obtains services from a provider in one of the closed
11 panel plans because the other closed panel plan (the one whose providers were not used) has no
12 liability. However, COB may occur during the plan year if the covered person receives
13 emergency services that would have been covered by both plans. In such a case, the secondary
14 plan shall use the provisions of section 23 of this Act to determine the amount it should pay for
15 the benefit.

16 Section 13. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
17 as follows:

18 No plan may use a COB provision, or any other provision, that allows it to reduce its
19 benefits with respect to any other coverage its insured may have that does not meet the
20 definition of a plan as provided by this Act.

21 Section 14. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
22 as follows:

23 If a person is covered by two or more plans, the provisions for determining the order of
24 benefit payments are as follows:

- 1 (1) The primary plan shall pay or provide its benefits as if any secondary plan did not
2 exist;
- 3 (2) If the primary plan is a closed panel plan and the secondary plan is not a closed panel
4 plan, the secondary plan shall pay or provide benefits as if it were the primary plan
5 when a covered person uses a nonpanel provider, except for emergency services or
6 authorized referrals that are paid or provided by the primary plan;
- 7 (3) If multiple contracts providing coordinated coverage are treated as a single plan
8 under this Act, this section applies only to the plan as a whole, and coordination
9 among the component contracts is governed by the terms of the contracts. If more
10 than one carrier pays or provides benefits under the plan, the carrier designated as
11 primary within the plan shall be responsible for the plan's compliance with this Act;
- 12 (4) If a person is covered by more than one secondary plan, the order of benefit
13 determination provisions of this Act decide the order in which secondary plans
14 benefits are determined in relation to each other. Each secondary plan shall take into
15 consideration the benefits of any primary plan and the benefits of any other plan,
16 which, under the provisions of this Act, has its benefits determined before those of
17 that secondary plan;
- 18 (5) Except as provided in subdivision (2) of this section, a plan that does not contain
19 order of benefit determination provisions that are consistent with this Act is always
20 the primary plan unless the provisions of both plans, regardless of the provisions of
21 this section, state that the complying plan is primary;
- 22 (6) Coverage that is obtained by virtue of membership in a group and designed to
23 supplement a part of a basic package of benefits may provide that the supplementary
24 coverage shall be excess to any other parts of the plan provided by the contract

1 holder. Examples of these types of situations are major medical coverages that are
2 superimposed over base plan hospital and surgical benefits, and insurance type
3 coverages that are written in connection with a closed panel plan to provide out-of-
4 network benefits.

5 Section 15. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
6 as follows:

7 A plan may take into consideration the benefits paid or provided by another plan only if,
8 under the provisions of this Act, it is secondary to that other plan.

9 Section 16. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 Each plan shall determine its order of benefits using the first section of sections 17 to 22,
12 inclusive, that applies.

13 Section 17. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 The plan that covers the person other than as a dependent, for example as an employee,
16 member, subscriber, policyholder, or retiree, is the primary plan and the plan that covers the
17 person as a dependent is the secondary plan.

18 However, if the person is a medicare beneficiary, and, as a result of the provisions of Title
19 XVIII of the Social Security Act and implementing regulations, medicare is:

- 20 (1) Secondary to the plan covering the person as a dependent; and
21 (2) Primary to the plan covering the person as other than a dependent (e.g. a retired
22 employee);

23 then the order of benefits is reversed so that the plan covering the person as an employee,
24 member, subscriber, policyholder, or retiree is the secondary plan and the other plan covering

1 the person as a dependent is the primary plan.

2 Section 18. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 Unless there is a court decree stating otherwise, plans covering a dependent child shall
5 determine the order of benefits as follows:

6 (1) For a dependent child whose parents are married or are living together, whether or
7 not they have ever been married:

8 (a) The plan of the parent whose birthday falls earlier in the calendar year is the
9 primary plan; or

10 (b) If both parents have the same birthday, the plan that has covered the parent
11 longest is the primary plan;

12 (2) For a dependent child whose parents are divorced or separated or are not living
13 together, whether or not they have ever been married:

14 (a) If a court decree states that one of the parents is responsible for the dependent
15 child's health care expenses or health care coverage and the plan of that parent
16 has actual knowledge of those terms, that plan is primary. If the parent with
17 responsibility has no health care coverage for the dependent child's health care
18 expenses, but that parent's spouse does, that parent's spouse's plan is the
19 primary plan. This item does not apply with respect to any plan year during
20 which benefits are paid or provided before the entity has actual knowledge of
21 the court decree provision;

22 (b) If a court decree states that both parents are responsible for the dependent
23 child's health care expenses or health care coverage, the provisions of
24 subdivision 1 of this section shall determine the order of benefits;

1 (c) If a court decree states that the parents have joint custody without specifying
2 that one parent has responsibility for the health care expenses or health care
3 coverage of the dependent child, the provisions of subdivision 1 of this section
4 shall determine the order of benefits; or

5 (d) If there is no court decree allocating responsibility for the child's health care
6 expenses or health care coverage, the order of benefits for the child are as
7 follows:

8 (i) The plan covering the custodial parent;

9 (ii) The plan covering the custodial parent's spouse;

10 (iii) The plan covering the noncustodial parent; and then

11 (iv) The plan covering the noncustodial parent's spouse;

12 (3) For a dependent child covered under more than one plan of individuals who are not
13 the parents of the child, the order of benefits shall be determined, as applicable, under
14 subdivision 1 or 2 of this section as if those individuals were parents of the child.

15 Section 19. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
16 as follows:

17 The plan that covers a person as an active employee that is, an employee who is neither laid
18 off nor retired or as a dependent of an active employee is the primary plan. The plan covering
19 that same person as a retired or laid-off employee or as a dependent of a retired or laid-off
20 employee is the secondary plan.

21 If the other plan does not have the provisions of this section, and as a result, the plans do not
22 agree on the order of benefits, the provisions of this section do not apply.

23 This section does not apply if the provisions in section 17 of this Act can determine the
24 order of benefits.

1 Section 20. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
2 as follows:

3 If a person whose coverage is provided pursuant to COBRA or under a right of continuation
4 pursuant to state or other federal law is covered under another plan, the plan covering the person
5 as an employee, member, subscriber, or retiree or covering the person as a dependent of an
6 employee, member, subscriber, or retiree is the primary plan and the plan covering that same
7 person pursuant to COBRA or under a right of continuation pursuant to state or other federal
8 law is the secondary plan.

9 If the other plan does not have these provisions, and if, as a result, the plans do not agree on
10 the order of benefits, these provisions do not apply.

11 This section does not apply if the provisions in section 17 of this Act determine the order
12 of benefits.

13 Section 21. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 If the preceding provisions in sections 17 to 20, inclusive, do not determine the order of
16 benefits, the plan that covered the person for the longer period of time is the primary plan and
17 the plan that covered the person for the shorter period of time is the secondary plan.

18 To determine the length of time a person has been covered under a plan, two successive
19 plans shall be treated as one if the covered person was eligible under the second plan within
20 twenty-four hours after coverage under the first plan ended.

21 The start of a new plan does not include:

- 22 (1) A change in the amount or scope of a plan's benefits;
- 23 (2) A change in the entity that pays, provides, or administers the plan's benefits; or
- 24 (3) A change from one type of plan to another, such as, from a single employer plan to

1 a multiple employer plan.

2 The person's length of time covered under a plan is measured from the person's first date of
3 coverage under that plan. If that date is not readily available for a group plan, the date the person
4 first became a member of the group shall be used as the date from which to determine the length
5 of time the person's coverage under the present plan has been in force.

6 Section 22. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 If the preceding provisions of sections 17 to 21, inclusive, do not determine the order of
9 benefits, the allowable expenses shall be shared equally between the plans.

10 Section 23. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
11 as follows:

12 In determining the amount to be paid by the secondary plan on a claim, if the plan wishes
13 to coordinate benefits, the secondary plan shall calculate the benefits it would have paid on the
14 claim in the absence of other health care coverage and apply that calculated amount to any
15 allowable expense under its plan that is unpaid by the primary plan. The secondary plan may
16 reduce its payment by the amount so that, when combined with the amount paid by the primary
17 plan, the total benefits paid or provided by all plans for the claim do not exceed one hundred
18 percent of the total allowable expense for that claim. In addition, the secondary plan shall credit
19 to its plan deductible any amounts it would have credited to its deductible in the absence of
20 other health care coverage.

21 Section 24. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
22 as follows:

23 A secondary plan that provides benefits in the form of services may recover the reasonable
24 cash value of the services from the primary plan, to the extent that benefits for the services are

covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this section requires a plan to reimburse a covered person in cash for the value of services provided by a plan that provides benefits in the form of services.

Section 25. That chapter 58-18A be amended by adding thereto a NEW SECTION to read as follows:

A plan with order of benefit determination provisions that comply with this Act may coordinate its benefits with a plan that is excess or always secondary or that uses order of benefit determination provisions that are inconsistent with those contained in this Act on the following basis:

- (1) If the complying plan is the primary plan, it shall pay or provide its benefits first;
- (2) If the complying plan is the secondary plan, it shall pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In such a situation, the payment shall be the limit of the complying plan's liability; and
- (3) If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay its benefits accordingly. If, within two years of payment, the complying plan receives information as to the actual benefits of the noncomplying plan, it shall adjust payments accordingly.

Section 26. That chapter 58-18A be amended by adding thereto a NEW SECTION to read as follows:

If the noncomplying plan reduces its benefits so that the covered person receives less in benefits than the covered person would have received had the complying plan paid or provided

1 its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the
2 primary plan, then the complying plan shall advance to the covered person or on behalf of the
3 covered person an amount equal to the difference.

4 In no event may the complying plan advance more than the complying plan would have paid
5 had it been the primary plan less any amount it previously paid for the same expense or service.
6 In consideration of the advance, the complying plan shall be subrogated to all rights of the
7 covered person against the noncomplying plan. The advance by the complying plan shall also
8 be without prejudice to any claim it may have against a noncomplying plan in the absence of
9 subrogation.

10 Section 27. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
11 as follows:

12 COB differs from subrogation. Provisions for one may be included in health care benefits
13 contracts without compelling the inclusion or exclusion of the other.

14 Section 28. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 If the plans cannot agree on the order of benefits within thirty calendar days after the plans
17 have received all of the information needed to pay the claim, the plans shall immediately pay
18 the claim in equal shares and determine their relative liabilities following payment. However,
19 no plan is required to pay more than it would have paid had it been the primary plan.

20 Section 29. That chapter 58-18A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 A contract that provides health care benefits and that was issued before the effective date
23 of this Act shall be brought into compliance with this Act by the later of:

24 (1) The next anniversary date or renewal date of the contract;

(2) Twelve months following July 1, 2006; or

(3) The expiration of any applicable collectively bargained contract pursuant to which it was written.

For the transition period between the adoption of this Act and the timeframe for which plans are to be in compliance pursuant to this section, no plan that is subject to the prior COB requirements may be considered a noncomplying plan by a plan subject to the new COB requirements. If there is a conflict between the prior COB requirements under the prior act and the new COB requirements under this Act, the prior COB requirements shall apply.

Section 30. That chapter 58-18A be amended by adding thereto a NEW SECTION to read as follows:

This Act does not affect an action or proceeding commenced before this Act takes effect.

Section 31. That §§ 58-18A-8 to 58-18A-52, inclusive, be repealed.

Section 32. That § 58-17-10 be repealed.

~~58-17-10. A policy of health insurance shall contain no provision for reduction in the payment of benefits under the policy because of the existence of any other insurance with the same insurer or other insurers except for benefits payable under workers' compensation insurance.~~

~~Notwithstanding the above limitation, a major-medical or comprehensive type health insurance policy may contain a provision utilizing a variable deductible provision.~~

Section 33. That chapter 58-18A be amended by adding thereto a NEW SECTION to read as follows:

This Act does not impair or affect any duty or act done, offense committed or right accruing, accrued or acquired or liability, penalty, forfeiture or punishment incurred prior to the date on or after July 1, 2007, but the same may be employed, asserted, enforced, prosecuted or inflicted,

1 as fully and to the same extent as if this enactment had not been passed.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

309M0098

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1068** - 01/24/2006

Introduced by: Representatives Dykstra, Hargens, and Rounds and Senators Bartling and Gray

1 FOR AN ACT ENTITLED, An Act to require the names of certain parties to be listed in
2 instruments recorded by the register of deeds.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 7-9-7 be amended to read as follows:

5 7-9-7. No register of deeds may accept for record in ~~his~~ the office of the register of deeds:

6 (1) Any deed, affidavit terminating joint tenancy or life estate interests, or oil, gas, or
7 other mineral lease that does not include the names of the grantor and the grantee or
8 the lessor and the lessee, the names of the joint tenant, the post office address of the
9 grantee or lessee, and a legal description of the property conveyed or leased;

10 (2) Any mortgage ~~which that~~ does not include the names of the mortgagor and the
11 mortgagee, the post office address of the mortgagee, a legal description of the
12 property, and the amount of the mortgage and when it is due;

13 (3) Any assignment of mortgage or oil, gas, or other mineral lease ~~which that~~ does not
14 include the names of the assignor and the assignee, the post office address of the
15 assignee, and a legal description of the property; or



- 1 (4) Any deed or contract for deed dated after July 1, 1988, used in the purchase,
2 exchange, transfer, or assignment of interest in real property ~~which~~ that is not
3 accompanied by a certificate of value containing; the name and address of the buyer
4 and seller, the legal description of the real property, the actual consideration
5 exchanged for the real property, the relationship of the seller and buyer, if any, and
6 the terms of payment if other than payment in full at the time of sale.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

345M0063

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1077** - 01/24/2006

Introduced by: Representatives Boomgarden, Deadrick, Dykstra, Gillespie, Hargens, Hunhoff, Jerke, Kroger, Pederson (Gordon), Rausch, Rave, Schafer, and Sebert and Senators Kooistra, Koskan, Lintz, Moore, Nesselhuf, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to authorize water user districts to establish and operate
2 wastewater systems.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 46A-9-1 be amended to read as follows:

5 46A-9-1. Conservation of the state's water resources is hereby declared to be a state
6 function, and the public interest, welfare, convenience, and necessity require the creation of
7 water user districts and the construction of systems of works, ~~in the manner hereinafter provided~~
8 as provided in this chapter, for the conservation, storage, distribution, and utilization of water
9 and the collection, treatment, and disposal of wastewater. The construction of ~~said~~ systems of
10 works by such districts, as ~~herein provided for~~ provided in this chapter, is hereby declared to be
11 in all respects for the welfare and benefit of the people of South Dakota. It is the intention of the
12 Legislature of South Dakota that this chapter shall be liberally construed to effectuate ~~the~~
13 ~~purposes herein provided for~~ these purposes.

14 Section 2. That § 46A-9-2 be amended to read as follows:



46A-9-2. Terms used in this chapter mean:

- (1) "Board," ~~shall mean~~ the board of directors of a district organized under this chapter;
- (2) "City" or "town," ~~shall mean~~ a municipal corporation as classified in §§ 9-2-1 and 9-2-2, ~~and "city" shall also mean.~~ The term, city, also means a city organized under special territorial charter;
- (3) "Landowner," ~~shall mean~~ any resident of South Dakota who is an owner of land in any county containing any proposed or existing water user district as evidenced by records in the office of the register of deeds or director of equalization; ~~provided, however, that.~~ However, if land is sold under a contract for deed, which is of record in the office of the register of deeds or director of equalization, both the vendor and vendee shall be treated as ~~a landowner~~ landowners;
- (4) "Project," ~~shall mean~~ any one of the works ~~hereinafter~~ defined in this section, or any combination of such works which are physically connected or jointly managed and operated as a single unit;
- (5) "Water Management Board," the state board created in § 1-40-15;
- (6) "Water user district" or "district," ~~shall mean a~~ any district organized under this chapter, either as originally organized or as the ~~same may be from time to time~~ district is reorganized, altered, or extended;
- (7) "Works" and "system," ~~shall be deemed to include~~ all lands, property, rights, rights-of-way, easements, and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the board in connection with ~~such the~~ works, and shall embrace or system. The terms, works and system, include all means of conserving, controlling, and distributing water, including, ~~without limiting the generality of the foregoing,~~ reservoirs, dams, feeder

1 canals, diversion canals, distributing canals, lateral ditches, structures, pumping units,
2 mains, pipelines, and waterworks systems, ~~and shall~~. The terms include all such
3 works for the conservation, development, storage above or under the ground,
4 spreading, distribution, utilization, and drainage of water, including, ~~without limiting~~
5 ~~the generality of the foregoing,~~ works for the purpose of irrigation, drainage, flood
6 control, ~~watering of stock,~~ stock watering, and supplying of water for public,
7 domestic, industrial, and other uses. The terms include any plant or system for the
8 collection, treatment, or disposal of wastewater, including sanitary sewers and
9 sewage and sewage treatment plants and systems.

10 Section 3. That § 46A-9-23.1 be amended to read as follows:

11 46A-9-23.1. If the board of directors of a water user district finds that there are lands within
12 the district not utilizing the ~~water supply~~ services of the district and that it is not feasible or
13 necessary to retain those lands within the district, the board shall adopt a resolution stating its
14 findings and declaring its intention to exclude the lands. The board shall, within ten days
15 following the adoption of the resolution, file it with the Board of Water and Natural Resources.
16 Upon receipt of the resolution, the Board of Water and Natural Resources shall determine
17 whether the resolution complies with the requirements to exclude the lands, and if so, shall
18 establish a hearing date on the issue no later than ninety days from the date of the filing of the
19 resolution. Following the hearing, the Board of Water and Natural Resources may approve or
20 disapprove the action proposed by the resolution. Upon approval and filing by the district board
21 of a certificate of approval in the Office of the Secretary of State, together with a copy of the
22 resolution, and after filing by the district board of a copy certified by the secretary of state in the
23 office of the county auditor of each county in which any lands to be excluded are located, the
24 lands shall be excluded from the water user district.

Section 4. That § 46A-9-26 be amended to read as follows:

46A-9-26. Every owner of land and entryman within the district, and every person or corporation which is a party to a contract with the district for the purchase of water, for the collection, treatment, or disposal of wastewater, or other services to be furnished by the district, may cast one vote at each election for each director to be elected for whom the voter is entitled to vote. However, the vote which a voter is entitled to cast by reason of being a party to any such contract with the district ~~shall be~~ is in addition to the vote to which the voter may be entitled by reason of being a landowner or entryman within the district. ~~In case~~ If election divisions are provided for, each person or corporation entitled to vote by reason of being a party to a contract, as ~~above provided in this section,~~ shall select the division in which ~~he or it shall vote, which the person or corporation will vote.~~ The selection shall be made under procedures established by resolution by the board of directors.

Section 5. That § 46A-9-42 be amended to read as follows:

46A-9-42. Any nonprofit corporation, cooperative, or association engaged in the treatment, distribution, ~~and~~ or sale of water or the collection, treatment, or disposal of wastewater to a rural area may, by majority vote of the membership voting in an election ~~thereon~~ on the question, transfer all of its assets, liabilities, contracts, and other obligations to a water user district as defined in § 46A-9-2, sanitary district authorized to operate a water system under § 34A-5-41, or a municipality. ~~Such action must also be~~ No such action may be taken unless approved by majority vote of the water user district or sanitary district membership voting in an election ~~thereon~~ on the action.

Section 6. That § 46A-9-43 be amended to read as follows:

46A-9-43. In connection with the powers provided by §§ 46A-9-40 and 46A-9-41, ~~such the~~ water user district ~~shall have the right and power to~~ may enter into any contract, lease,

1 agreement, or arrangement with any state, county, municipality, district, governmental, or public
2 corporation or association, or with any person, firm, or corporation, public or private, or with
3 the government of the United States, or with any officer, department, bureau, or agency ~~thereof~~
4 of the government of the United States, or with any corporation organized under federal law ~~for~~
5 ~~the purpose of exercising or utilizing~~. The contract, lease, agreement, or arrangement may be
6 for any of the following purposes:

- 7 (1) Exercising or using any one or more of the ~~above enumerated powers, or for the sale~~
8 powers authorized in §§ 46A-9-40 and 46A-9-41;
- 9 (2) Selling, leasing, or otherwise furnishing or establishing ~~of~~ water rights, water supply,
10 conveyance and distribution of water, water service, or water storage, ~~for irrigation;~~
- 11 (3) Irrigation or flood control ~~or for domestic;~~
- 12 (4) Domestic, industrial, municipal, or stock-watering purposes, ~~or for the drainage;~~
- 13 (5) Drainage of lands, ~~or for the financing;~~
- 14 (6) Provision of services or systems for the collection, treatment, or disposal of
15 wastewater;
- 16 (7) Provision of billing, collection, hookup, or termination services for entities that
17 provide services for the collection, treatment, or distribution of water or wastewater;
- 18 (8) Financing or payment of the cost and expenses incident to the construction,
19 acquisition, or operation of such works, or incident to any obligation or liability
20 entered into or incurred by ~~such~~ the district.

21 Section 7. That § 46A-9-48 be amended to read as follows:

22 46A-9-48. No person, irrigation district, municipality, county, or other governmental
23 subdivision, irrigation company, or other public or private corporation or association ~~shall be~~
24 is liable for the payment of any rent or charge for water storage; water supply; for the

1 collection, treatment, or disposal of wastewater; or for any of the costs of operation of ~~such a~~
2 water user district, unless a contract ~~therefor~~ for such services has been entered into between
3 ~~such the~~ person or public or private organization and the water user district furnishing ~~such~~
4 ~~water storage or water supply~~ the services.

5 Section 8. That § 46A-9-53 be amended to read as follows:

6 46A-9-53. ~~Prior to such~~ Before publication of any advertisement pursuant to chapter 5-18,
7 plans and specifications for the proposed construction work or materials shall be prepared and
8 filed at the principal office or place of business of the water user district. ~~Such~~ The
9 advertisement shall be published as required by § 5-18-3 and, in the discretion of the board of
10 directors of the district, may be published in such additional newspapers or trade or technical
11 periodicals as may be selected by the board in order to give proper notice of the receiving of
12 bids. ~~Such~~ The advertisement shall designate the nature of construction work proposed to be
13 done or materials proposed to be purchased. ~~The Department of Water and Natural Resources~~
14 ~~shall supervise bid lettings by the board of directors of water user districts.~~

15 Section 9. That § 46A-9-57 be amended to read as follows:

16 46A-9-57. Any such water user district may pledge and put up as collateral security for a
17 loan any district obligations. Any district issuing district obligations under the provisions of this
18 chapter ~~is hereby specifically authorized and empowered to~~ may pledge all or any part of the
19 revenues which the district may derive from the sale, conveyance, ~~and~~ or distribution of water
20 for irrigation, domestic, municipal, industrial, ~~and~~ or stock-watering purposes, ~~or;~~ from the
21 storage of water; ~~or from the collection, treatment, or disposal of wastewater,~~ as security for the
22 payment of the principal and interest ~~thereon~~ on the loan. Any such pledge of revenues shall be
23 made by the directors of the district by resolution or by agreement with the purchasers or holders
24 of ~~such the~~ district obligations. Any such resolution or agreement may specify the particular

1 revenues that are pledged and the terms and conditions to be performed by the district and the
2 rights of the holders of ~~such~~ the district obligations, and may provide for priorities of liens in
3 any such revenues as between the holders of district obligations issued at different times or
4 under different resolutions or agreements.

5 Section 10. That § 46A-9-60 be amended to read as follows:

6 46A-9-60. The directors of any water user district organized under the provisions of this
7 chapter ~~are authorized to agree~~ may enter into agreements with the holders of any such district
8 obligations as to the maximum or minimum amounts ~~which such districts shall~~ that the district
9 may charge and collect for water sold by the district or for the collection, treatment, or disposal
10 of wastewater or other services provided by the district.

11 Section 11. That § 46A-9-62 be amended to read as follows:

12 46A-9-62. Every contract made by the board of directors for the sale, conveyance, and
13 distribution of water, use of water, water storage, or for the collection, treatment, or disposal of
14 wastewater, or other service, or for the sale of any property or facilities, shall provide that in the
15 event of any failure or default in the payment of any moneys specified in ~~such~~ the contract to
16 be paid to the board, the board may, upon such notice as ~~shall be~~ prescribed in ~~such~~ the
17 contract, terminate ~~such~~ the contract and all obligations ~~thereunder~~ under the contract. The act
18 of the board in ceasing on any such default to furnish or deliver water, use of water, or water
19 storage, ~~under such~~ or other services under the contract ~~shall~~ does not deprive the board of, or
20 limit any remedy provided by ~~such~~ the contract or by law for the recovery of any ~~and all~~ moneys
21 due or which may become due under ~~such~~ the contract.

22 Section 12. That § 46A-9-63 be amended to read as follows:

23 46A-9-63. The board of directors shall create ~~three~~ separate funds, one fund to be known
24 as the construction fund, another fund to be known as the water fund, ~~and~~ another fund to be

1 known as the debt service fund, ~~each such fund to~~ and, if the district provides services for the
2 collection, treatment, or disposal of wastewater, a fund to be known as the wastewater fund.
3 Each such fund shall be identified by the same series letter or letters as the bonds, warrants,
4 notes, debentures, or other evidences of indebtedness of ~~such the~~ series. A separate account shall
5 be kept ~~of for~~ for each construction fund ~~and of,~~ each water fund ~~and of,~~ each wastewater fund, and
6 each debt service fund for each project.

7 Section 13. That § 46A-9-65 be amended to read as follows:

8 46A-9-65. All income or profit and revenue of the works and all moneys received from the
9 sale, conveyance, distribution, or disposal of water, use of water, or water storage; from the
10 collection, treatment, or disposal of wastewater; and from the operation, lease sale, or other
11 disposition of the works, property, and facilities acquired under the provisions of this chapter,
12 shall be paid to the credit of the appropriate water or wastewater fund. All costs of operation,
13 maintenance, and repairs of the works, and all administrative and clerical expenses of the water
14 user district, shall be paid from the appropriate water or wastewater fund.

15 Section 14. That § 46A-9-69 be amended to read as follows:

16 46A-9-69. No irrigation or other water supply works, ~~or~~ drainage works, or systems or
17 facilities for the collection, treatment, or disposal of wastewater owned by the district ~~shall~~ may
18 be sold, alienated, or mortgaged by the district, except under the circumstances described by
19 §§ 46A-9-70 to 46A-9-72, inclusive.

20 Section 15. That § 46A-9-76 be amended to read as follows:

21 46A-9-76. ~~This chapter shall not be construed as depriving~~ Nothing in this chapter deprives
22 any municipality within the State of South Dakota, located either wholly or partially within or
23 outside any water user district, ~~from~~ of the exercise of any rights with which it may be invested
24 by law to construct, acquire, operate, maintain, or dispose of waterworks, or systems or facilities

1 for the collection, treatment, or disposal of wastewater, or to perform any other of its lawful
2 functions. ~~Provided, that~~ However, any municipality may enter into any contract with any such
3 district for the storage, purchase, or distribution of water or for the collection, treatment or
4 disposal of wastewater, for municipal, domestic, or industrial purposes.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

456M0072

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1121** - 01/24/2006

Introduced by: Representatives Rounds, Cutler, Hills, Murschel, Olson (Ryan), Rhoden, Sigdestad, and Tornow and Senators Dempster, Duenwald, Duniphan, Gray, Koskan, Lintz, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to revise notification requirements for certain planning and
2 zoning changes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 11-2-28.1 be amended to read as follows:

5 11-2-28.1. An individual landowner may petition the board to change the zoning of all or
6 any part of the landowner's property. The petitioning landowner shall notify all other abutting
7 landowners by registered or certified mail of the petitioned zoning change at least seven days
8 before the public hearing is held on the matter by the planning commission. Property is
9 considered as abutting even though it may be separated from the property of the petitioner by
10 a public road or highway. If the affected property abuts, adjoins, or is within one mile of a
11 county border, the county auditor on behalf of the individual landowner shall also notify, by
12 registered or certified mail, the county auditor in the adjoining county of the petitioned zoning
13 change at least seven days before the public hearing is held on the matter by the planning
14 commission.



1 Section 2. That § 11-2-29 be amended to read as follows:

2 11-2-29. The planning commission shall hold at least one public hearing on any proposed
3 change or modification to the plan or ordinances. Notice of the time and place of the hearing
4 shall be given once at least ten days in advance by publication in a legal newspaper of the
5 county. The county auditor shall also provide a copy of the notice to the county auditor in the
6 abutting county at least ten days before the hearing on any proposed change or modification to
7 the plan and ordinances. At the public hearing, any person may appear and request or protest the
8 requested change.